

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

STEVEN BRADLEY HODGES

Plaintiff,

vs.

JAMES BACA, *et al.*,

## Defendants.

3:07-cv-0051-BES (VPC)

**REPORT AND RECOMMENDATION**  
**OF U.S. MAGISTRATE JUDGE**

November 7, 2007

This Report and Recommendation is made to the Honorable Brian E. Sandoval, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is defendants' motion to dismiss (#21). Plaintiff opposed (#27) and defendants replied (#28). The court has thoroughly reviewed the record and the motions and recommends that defendants' motion to dismiss (#21) be denied.

## I. HISTORY & PROCEDURAL BACKGROUND

Steven Bradley Hodges (“plaintiff”), a *pro se* inmate, is currently incarcerated at Nevada State Prison (“NSP”) in the custody of the Nevada Department of Corrections (“NDOC”) (#23). Plaintiff brings his first amended complaint pursuant to 42 U.S.C. § 1983, alleging violations of his First Amendment right to access to the courts and his Fourteenth Amendment rights to due process and equal protection (#18).<sup>1</sup> Plaintiff names as defendants James Baca, NSP Associate Warden; Bill Donat, NSP Warden; and Glen Whorton, former NDOC Director. *Id.*

In count I, plaintiff alleges that while incarcerated at NSP in March 2006, defendants placed him in administrative segregation pending investigation of a disciplinary infraction. *Id.* Plaintiff was subsequently found guilty and received a sentence of sixty days in “austere housing”

<sup>1</sup> On January 4, 2007, plaintiff filed his complaint in the First Judicial District Court of the State of Nevada in and for Carson City. Defendants removed to federal court pursuant to 28 U.S.C. §§ 1441 and 1443 (#1). On May 24, 2007, the court screened plaintiff's First Amended Complaint and dismissed count III, plaintiff's access to the courts claim (#20).

1 and 120 days loss of good time credits. *Id.* Plaintiff alleges that defendant Baca then “over-rode”  
 2 the disciplinary committee’s sanctions and kept plaintiff in administrative segregation without  
 3 a due process hearing. *Id.* Plaintiff further alleges that in violation of his right to due process,  
 4 he remained in administrative segregation for fourteen months without ever being afforded a  
 5 hearing. *Id.*

6 In count II, plaintiff alleges that defendants treated him differently than inmates who were  
 7 similarly situated to him. *Id.* Plaintiff claims that another inmate, inmate Gedrose, was sentenced  
 8 to 120 days in disciplinary detention for the same March 2006 offense as plaintiff, and was  
 9 released in June 2006. *Id.* However, plaintiff, who allegedly had a less severe sentence than  
 10 inmate Gedrose of sixty days in austere housing, was continually kept in administrative  
 11 segregation. *Id.*

12 The court notes that the plaintiff is proceeding *pro se*. “In civil cases where the plaintiff  
 13 appears *pro se*, the court must construe the pleadings liberally and must afford plaintiff the benefit  
 14 of any doubt.” *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9<sup>th</sup> Cir. 1988); *see also Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

## 16 II. DISCUSSION & ANALYSIS

### 17 A. Discussion

#### 18 1. Motion to Dismiss Standard

19 When considering a motion to dismiss for failure to state a claim upon which relief can  
 20 be granted, all material allegations in the complaint are accepted as true and are construed in the  
 21 light most favorable to the non-moving party. *Barnett v. Centoni*, 31 F. 3d 813, 816 (9th Cir.  
 22 1994); *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). For the movant to succeed, it  
 23 must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim that  
 24 would entitle him to relief. *Barnett*, 31 F. 3d at 816; *see also Rothman v. Vedder Park Mgt.*, 912  
 25 F.2d 315, 316 (9th Cir. 1990).

26 Under section 1983, plaintiff must allege that (1) defendants subjected him to the  
 27

1 deprivation of a right, privilege or immunity guaranteed by the U.S. Constitution or U.S. law, and  
 2 (2) that the defendant acted under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988);  
 3 see also *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). “Conclusionary allegations,  
 4 unsupported by facts, [will be] rejected as insufficient to state a claim under the Civil Rights  
 5 Act.” *Jones v. Community Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (quoting  
 6 *Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977)). “The plaintiff must ‘allege with at  
 7 least some degree of particularity overt acts which defendants engaged in’ that support the  
 8 plaintiff’s claim.” *Id.*, (quoting *Powell v. Workmen’s Compensation Board*, 327 F.2d 131, 137  
 9 (2d Cir. 1964)).

10 **B. Analysis**

11 Defendants argue that plaintiff is challenging the results of his disciplinary hearing, which  
 12 included a loss of good time credits (#21). Defendants contend that plaintiff is therefore  
 13 challenging the length of his confinement, and must bring a *habeas corpus* action prior to  
 14 bringing a section 1983 action, pursuant to the *Heck* doctrine. *Id.* Since he has not done so,  
 15 defendants conclude that plaintiff’s complaint must be dismissed. *Id.*

16 Plaintiff opposes, arguing that rather than have him serve his disciplinary sanction of sixty  
 17 days in austere housing, defendants moved him to administrative segregation for 470 days without  
 18 a classification hearing (#27). Plaintiff claims he has a state-created liberty interest based on the  
 19 mandatory language in Administrative Regulation 507, and also because it is an atypical and  
 20 significant hardship in relation to the ordinary incidents of prison life to be confined in  
 21 administrative segregation for four-hundred and seventy days without a hearing.<sup>2</sup> *Id.*

22 The court need not set out the law pursuant to the *Heck* doctrine, because the court has  
 23 very carefully reviewed the allegations in plaintiff’s complaint and concludes that defendants

25       <sup>2</sup> The court notes that inmates no longer have state-created liberty interests based on the mandatory  
 26 language in prison regulations; instead, states may under some circumstances create liberty interests  
 27 protected by the Due Process clause, but those liberty interests “will be generally limited to freedom from  
 restraint which... impose[s] atypical and significant hardship on the inmate in relation to the ordinary  
 incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995).

1 have clearly misinterpreted plaintiff's claims. Plaintiff is not challenging the merits of his March  
 2 24, 2006 disciplinary hearing, the procedure used during that disciplinary hearing, or the sanctions  
 3 that the disciplinary committee imposed (#18). Instead, plaintiff claims that defendant Baca  
 4 allegedly over-rode the disciplinary committee's sanction of sixty days in austere housing *after*  
 5 his disciplinary hearing and gave plaintiff a more severe sanction of time in administrative  
 6 segregation, which turned out to be 470 days without the benefit of a hearing. In fact, plaintiff's  
 7 claim could not be more clear as when he describes in count I the constitutional right defendants  
 8 allegedly violated "plaintiff's right to due process under the 14th Amendment when he was placed  
 9 and held in administrative segregation without due process hearing or classification hearing."  
 10 Nowhere in his complaint does plaintiff mention challenging his sentence of sixty days in austere  
 11 housing or the loss of good-time credits.<sup>3</sup>

12 Defendants' motion to dismiss is denied.<sup>4</sup>

### 13 III. CONCLUSION

14 Based on the foregoing, the court concludes that plaintiff is not challenging the length of  
 15 his confinement; rather, he is challenging his stay in administrative segregation for 470 days  
 16 without a hearing. Thus, the *Heck* doctrine does not apply. As such, the court recommends that  
 17 defendants' motion to dismiss (#21) be **DENIED**.

18 The parties are advised:

19 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
 20 Practice, the parties may file specific written objections to this report and recommendation  
 21 within ten days of receipt. These objections should be entitled "Objections to Magistrate  
 22 Judge's Report and Recommendation" and should be accompanied by points and authorities  
 23 for consideration by the District Court.

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24  
 25 <sup>3</sup> Indeed, plaintiff notes that he even made a request to start serving his sentence in austere housing  
 26 on March 27, 2006, but was denied (#18).

27  
 28 <sup>4</sup> The court cautions that it will hold defense counsel to Rule 11 standards and will *sua sponte* raise  
 the issue if this occurs in the future.

1           2. This report and recommendation is not an appealable order and any notice of  
2 appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District  
3 Court's judgment.

#### **IV. RECOMMENDATION**

5           **IT IS THEREFORE RECOMMENDED** that defendants' motion to dismiss (#21) be  
6 **DENIED.**

7 || DATED: November 7, 2007

Valerie P. Cooke

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**UNITED STATES MAGISTRATE JUDGE**